IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-595

C.DELORES TUCKER, Secretary of the Commonwealth of Pennsylvania, THE COMMISSIONERS OF ELECTIONS OF THE COMMONWEALTH OF PENNYSYLVANIA AND THE CITY OF PHILADELPHIA; and WILLIAM SYKES,

Appellants

v.

BERNARD SALERA and THE U.S. LABOR PARTY and MAX WEINER and THE CONSUMER PARTY,

Appellees

MOTION TO AFFIRM

David S. Heller
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I. CASES

II. STATUTES

III. STATUS OF THE CASE

The Opinion below has been reported *sub nom Salera v Tucker* 399 F Supp 1258(1975). The instant appeal has been taken pursuant to 28 USC 1253.

AND NOW COME Appellees Bernard Salera and the U.S. Labor Party by their attorney David S. Heller, and move this Court for an Order affirming the judgement of the Court below and dismissing the appeal taken by Appellants herein. In support thereof Appellees state as follows.

1. As fully stated in Appellees *Motion* and *Memorandum of Law in Opposition to Appellants Motion to Stay the Effect of Injunction Pending Appeal*, the statutes under attack, 25 P.S. 2913 (b) and (c) (hereinafter the law) have been previously considered several times by the Federal Courts, as long ago as 1972. In each such case, Appellant Tucker appeared and fully argued her position. In each case, with the exception of *Williams v Tucker* 382 F Supp386 (M.D.Pa. 1974), the third such case, the law was declared invalid. *Williams v Tucker*, as the Three-Judge Court below found, was decided on different grounds than are present herein.

2. Appellant Tucker has been previously held to be bound by the previous decisions in *Peoples Party v Tucker* 347 F Supp 1, (1972) (Three-Judge Court) and *Consumers Party v Tucker* 364 F Supp

594 (1973) under principles of *res judicata*.

3. It offends basic notions of due process that Appellant Tucker be allowed to litigate a case to an adverse conclusion three times before appealing. Therefore, this Court should reject said appeal.

4. This Court has held that there is no sufficient state interest in forcing political bodies which do not enter candidates in primary elections to file nominating petitions before said primary elections. *Storer v Brown* 415 US 724,738-744 (1974). The law under attack requires such political bodies to submit nominating petitions 49 days before the primary elections.

5. This Court has held that there is no sufficient state interest in requiring political bodies which do not enter candidates in primary elections to submit nominating petitions over 60 days prior to the general elections. *Storer v Brown* supra. The law under attack requires such political bodies to submit nominating petitions 218 days before the general elections.

6. Requiring political bodies to gain access to the ballot for the general elections by circulation of nominating petitions during a three week period

starting ten weeks before the primary elections, which period of time ends 218 days prior to the general elections is Unconstitutional as:

(a) Irrational and unrelated to any bona fide State interest in that there is no reason for such period to be related to the primary elections date, where persons cannot participate, or can by legislation be banned from participating in both forms of nomination.

(b) Depriving political bodies of their First Amendment, Equal Protection, and Due Process rights in that said period is so remote from the general election that political bodies are faced with the onerous burden of seeking signatures for an election wherein the issues and personalities are not yet clear nor a matter of intense public interest, in inclement weather, and in an unduly short period of time.

(c) Assuming *arguendo* that a bona fide states interest exist in placing burdens on access to the ballot and so limiting the free choice of the electorate, the law under attack does not represent the least restrictive mode of fulfilling such state interest. *Williams v Rhodes* 393 US 23, 32-33 (1968);

Kramer v Union Free School District 395 US 621 (1969); *Bullock v Carter* 405 US 134 (1972); *Dunn v Blumstein* 405 US 330 (1972).

7. The Three-Judge Court correctly applied the law, and no error was committed by said Court herein.

WHEREFORE, Appellees pray this Court issue an Order affirming the judgement of the Court below, and dismissing Appellants' Appeal herein.

Respectfully Submitted,

David S. Heller

David S. Heller
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AFFIDAVIT IN SUPPORT
OF MOTION TO AFFIRM

DAVID S.HELLER being duly sworn, deposes and says:

1. I am the attorney for the Appellees in the above-entitled action. I make this affidavit in support of the Appellees Motion to Affirm the Judgement of the Three-Judge Court.

2. The factual allegations set forth in the attached Motion to Affirm are true to my knowledge except as to matters stated therein to be alleged on information and belief, and as to those matters I believe them to be true.

3. Service of the attached papers was made by depositing a true copy of the same in a mail box

maintained exclusively by the United States Postal Service, enclosed in a postage paid envelope addressed to the respective counsel herein, as listed on the attached list.

David S. Heller

David S. Heller

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